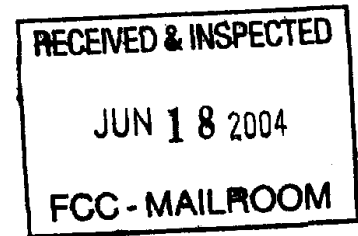




DOCKET FILE COPY ORIGINAL

June 17, 2004
Via Overnight Delivery



210 N. Park Ave.
Winter Park, FL
32789

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

P.O. Drawer 200
Winter Park, FL
32790-0200

Tel: 407-740-8575
Fax: 407-740-0613
tmi@tminc.com

RE: Andiamo Telecom, L.L.C. Petition for Waiver in CC Docket No. 96-128

Dear Ms. Dortch:

Enclosed for filing with the Commission on behalf of Andiamo Telecom, L.L.C. is an original and four (4) copies of the PETITION FOR WAIVER OF ANDIAMO TELECOM, L.L.C. in CC Docket No. 96-128.

Please acknowledge receipt of this filing by returning, date-stamped, the extra copy of this cover letter in the self-addressed, stamped-envelope that is provided for this purpose.

Should you have any questions regarding this request, kindly address them to my attention at (407) 740-8575 or to Mr. Jack Kelley, Chief Financial Officer of Andiamo Telecom, L.L.C., 10575 N. 114th Street, Suite 103, Scottsdale, AZ 85259, telephone number 602-344-0115.

Thank you for your assistance in this matter.

Sincerely,

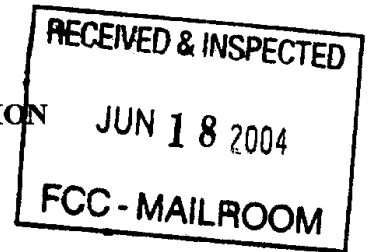
Sharon Thomas, Consultant to
Andiamo Telecom, LLC

Enclosures

cc: Jack Kelley, Andiamo
File: Andiamo - FCC

No. of Copies rec'd 014
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



In the Matter of)
)
The Pay Telephone Reclassification) CC Docket No. 96-128
and Compensation Provisions of the)
Telecommunications Act of 1996)

PETITION FOR WAIVER

Pursuant to section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") rules,¹ Andiamo Telecom, L.L.C. (referred to herein as "Andiamo" or "Petitioner") requests a limited waiver of the Commission's payphone call tracking system audit requirements set forth in the Commission's *Payphone Audit and Order* and section 64.1320 of the Commission's rules, 47 C.F.R. §64.1320.² Specifically, Andiamo requests a waiver, and extension, until January 1, 2005, in which to complete the payphone system audit and file the System Audit Report with the Commission, payphone service providers ("PSPs"), and interexchange carriers ("IXCs"), as applicable. Good cause exists for granting this waiver.

I. BACKGROUND

On October 3, 2003, the Commission released the *Payphone Audit Report and Order*, which requires, *inter alia*, all completing carriers to undergo an audit of their payphone compensation tracking system by an independent third party auditor and to file the System Audit Report with the Commission, each PSP for which it completes calls, and each facilities-based

¹ 47 C.F.R. §1.3

² *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 18 FCC Rcd 19975 (2003) ("*Payphone Audit Report and Order*"); 47 C.F.R. § 64.1320(a)-(b).

long distance carrier from which it receives calls.³ On May 11, 2004, the Commission announced that its audit requirements would be effective July 1, 2004.⁴ Due to the current demands placed on Andiamo's limited IT department as it continues to separate out the pieces of the business lines it recently purchased from Dancris Telecom, L.L.C. ("Dancris"), Andiamo is unable to satisfy the Commission's July 1, 2004, audit deadline.

In February 2004, Andiamo purchased certain lines of business from Dancris Telecom, L.L.C. Those lines included: (a) a prepaid calling card business; (b) a "one-plus" long-distance telephone service business; (c) an internet service business; and (d) a telephone operator service business. Andiamo then began the process of separating out its pieces of the Dancris network components associated with the lines of business it purchased from Dancris. The scope of work includes, but is not limited to, separating switches, decommissioning switches, replacing underlying carriers, SS7 signaling, billing systems, monitoring new networks, and assuming vendor and service contracts. In order to insure that the customers' calls will be routed and billed accurately, and that vendors and service providers will be paid timely, Andiamo has had to devote its limited IT resources, on a full-time basis, to the modification of its systems to support the lines of business it purchased from Dancris.

As a result, it is neither practical nor technically feasible to audit Andiamo's payphone compensation system by July 1, 2004. Andiamo cannot now conduct payphone compensation system audit without having to halt and postpone certain aspects of the systems separation. Furthermore, even though an outside independent auditor would conduct the audit, the audit process still require substantial technical support, and given the timing, Andiamo cannot provide

³ *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 18 FCC Rcd at 19975; 47 C.F.R. § 64.1320(a)-(b). In pertinent part, section 64.1320(a) states, "all Completing Carriers must undergo a system audit of their section 64.1310(a)(1) tracking system by an independent third party auditor." Section 64.1320(b) requires "each Completing Carrier (to) file an audit report from the auditor (the "System Audit Report") regarding the Completing Carrier's compliance with section 63.1310(a)(1) as of the date of the audit with the Commission's Secretary in CC Docket No. 96-128 and with each payphone service provider for which it completes calls and with each facilities-based long distance carrier from which it receives payphone calls."

⁴ *New Payphone Compensation Rules Will Go Into Effect on July 1, 2004, Public Notice*, DA 04-1309 (rel. May 11, 2004).

the IT support and commit the resources necessary to complete the FCC-mandated audit by July 1, 2004.

II. DISCUSSION

Pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Commission may waive any provision of its rules where "good cause" is shown.⁵ The Commission has concluded that good cause exists where "special circumstances warrant a deviation from the general rule, such deviation serves the public interest, and waiver would be consistent with the principles underlying the rule."⁶ Indeed, the United States Court of Appeals for the D.C. Circuit has stated that granting a waiver may be appropriate if: (1) special circumstances support a finding that strict adherence would not be in the public interest; and (2) a grant waiver would not undermine the underlying policy objectives of the rule in question.⁷ As explained below, good cause exists for granting the waiver requested herein.

Due to current demands on its IT staff, Andiamo respectfully requests that the Commission grant it a waiver of six months, until January 1, 2005, in which to complete the initial system audit and to file the System Audit Report with the Commission, PSPs, and IXC's, as applicable. Special circumstances warrant an extension of time to Andiamo in which to conduct the audit. Granting a temporary waiver of the audit requirement is in the public interest and is consistent with the underlying policy objectives of the audit requirement.

A. Special Circumstances Warrant a Deviation from Audit Requirement

Special Circumstances warrant a deviation from the requirement that Andiamo complete the payphone tracking system audit and submit the System Audit Report to the

⁵ 47 C.F.R. §1.3.

⁶ 1998 Biennial Regulatory Review - Review of Depreciation Requirements for Incumbent Local Exchange Carriers, CC Docket No. 98-137, Ameritech Corporation Telephone Operating Companies' Continuing Property Record Audit, et. al., CC Docket No. 99-117, GTE Telephone Operating Companies Release of Information Obtained During a Joint Audit, AAD File No. 98-26, Further Notice of Proposed Rulemaking, FCC 00-119, at note 8 (rel. April 3, 2000) (citing *Northeast Cellular Tel. Co. V. FCC*, 897 F.2d 1164(D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (1969); *Thomas Radio v. FCC*, 716F.2d 921 (D.C. Cir. 1983)).

⁷ *WAIT Radio*, 418 F2d at 1157.

Commission, PSPs, and IXC's, by July 1, 2004. As stated above, as a result of the purchase of certain lines of business from Dancris Telecom, in February 2004, Andiamo Telecom, L.L.C. began separating the networks of the two companies. The work includes, but is not limited to, separating switches, decommissioning switches, replacing underlying carriers, SS7 signaling, billing systems, monitoring new networks, and assuming vendor and service contracts.

Andiamo is at a critical stage in the process, and it is impractical to conduct the payphone audit at this time. Therefore, as a practical matter, it makes sense to delay conducting the audit.

Furthermore, even if Andiamo could devote the necessary resources, the audit companies that it has contacted will not commit to completing the audit July 1, 2004. Andiamo has contacted several different auditing companies in an effort to satisfy the auditing requirement. Due to high volume of audits that they have been asked to conduct, these companies have told Andiamo that they cannot commit to completing the audit by July 1, 2004.

Even if it were technically feasible to conduct the audit by July 1, 2004, Andiamo cannot feasibly devote the personnel resources necessary to conduct the audit by July 1, 2004. The network separation process is extremely labor and time intensive and Andiamo has devoted substantial company resources to completing the project, including reassigning personnel on a full-time basis. Although the audit will be conducted by an outside auditor, Andiamo still will need to devote substantial internal resources to assist the auditor. When Andiamo purchased the Dancris lines of business, it did not anticipate that the Commission's payphone audit requirement would coincide with this critical point in the network separation process.

B. Granting Andiamo's Waiver is in the Public Interest

It is in the public interest to grant Andiamo's waiver request. In *WAIT Radio v. FCC*, the Court stated that considerations of "hardship, equity, or more effective implementation of overall policy, [are] considerations that an agency cannot realistically ignore."⁸ Requiring strict compliance with the July 1 deadline would cause unnecessary and undue hardship. By

⁸ *WAIT Radio*, 418 F2d at 1159.

granting this Petition, the Commission will be acting in the public interest by encouraging business growth and efficiency, and the inevitable resulting benefits to consumers.

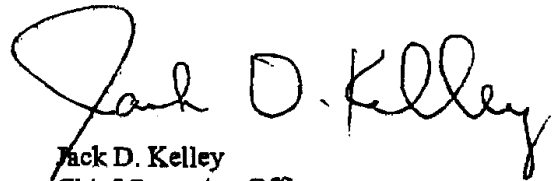
C. Granting a Waiver Is Consistent with the Policy Objectives Underlying the Audit Requirement

By permitting Andiamo to complete the necessary systems separation prior to conducting the audit, Andiamo will better able to manage and oversee the audit process. Moreover, extending the initial audit deadline for six months will not have an adverse impact in any party. The unique circumstances surrounding its recent acquisition satisfy the Commission's waiver standards. As such, Andiamo respectfully request that the Commission extend the initial audit deadline six months, until January 1, 2005.

III. CONCLUSION

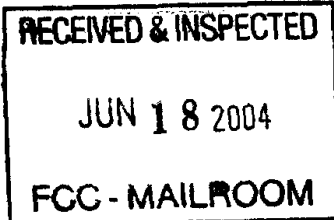
For the foregoing reasons, Andiamo respectfully requests that the Commission grant this Petition for Waiver by extending the initial audit deadline for six months, until January 1, 2005.

Respectfully submitted,



Jack D. Kelley
Chief Operating Officer
ANDIAMO TELECOM, L.L.C.
10575 N. 114th Street, Suite 103
Scottsdale, AZ 86259
Tel: 602-344-0115
Fax: 480-451-6547

Dated: June 16, 2004



VERIFICATION

Jack D. Kelley, being duly sworn, states as follows:

1. I am the Chief Operating Officer of Andiamo Telecom, L.L.C, whose address is 10575 N. 114th Street, Suite 103, Scottsdale, AZ 86259.
2. I am authorized to represent Andiamo, L.L.C. and to make this Affidavit on its behalf.
3. I have read the foregoing Petition for Waiver, filed by Andiamo Telecom, L.L.C. in CC Docket No. 96-128. The statements contained herein are true of my own knowledge, except as to matters which are herein stated on information and belief, and as to those matters, I believe them to be true.
4. I declare under penalty of perjury that the foregoing is true and correct.

Further affiant sayeth not.

By:

Name: Jack D. Kelley

Title: Chief Operating Officer

Date: June 16, 2004

Subscribed and sworn to before
me this 16 day of June, 2004.

Notary Public

My commission expires:

